

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

VICTOR BEAM,

Plaintiff,

vs.

Civ. Action No.
1:09-CV-0628 (NAM/DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

OFFICE OF PETER MARGOLIUS
7 Howard Street
Catskill, New York 12414

PETER MARGOLIUS, ESQ.

FOR DEFENDANT:

[NONE]

REPORT RECOMMENDATION

This civil rights action was commenced by plaintiff on June 1, 2009. Following the filing of plaintiff's complaint, on June 4, 2009, I issued an order denying the plaintiff's *in forma pauperis* application without prejudice, and directed the plaintiff to either pay the \$350.00 fee for filing this action or submit a renewed *in forma pauperis* application within thirty days of the date of that order. See Dkt. No. 4. That order also advised

the plaintiff that in the event of his failure to timely comply with that directive, a report would be issued to the assigned district judge, the Honorable Norman A. Mordue, recommending dismissal of the action based upon his failure to comply with the court's rules and other governing requirements. See *id.* Despite the passage of more than three months, plaintiff has not complied with this order.

Unless granted *in forma pauperis* status, a party commencing a civil action in this court must pay the required \$350.00 filing fee. 28 U.S.C. § 1914; see *Pettus v. Steves*, 9:08-CV-0675, 2009 WL 2156905, at *1 (N.D.N.Y. July 15, 2009) (Kahn, J.). The failure to meet this requirement constitutes grounds for dismissal of the action. *Bey v. Syracuse University*, 155 F.R.D. 413, 414 (N.D.N.Y. 1994).

Based upon the plaintiff's failure to comply with this court's orders and the Local Rules of practice, it is hereby respectfully

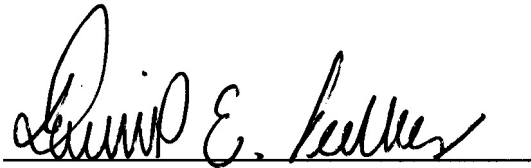
RECOMMENDED, that this action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, based upon the plaintiff's failure to prosecute and to comply with this court's orders and the Local Rules of practice.

NOTICE: Pursuant to 28 U.S.C. § 636(b)(1), the parties may lodge

written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court within TEN days of service of this report.

FAILURE TO SO OBJECT TO THIS REPORT WILL PRECLUDE APPELLATE REVIEW. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72; *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993).

It is hereby ORDERED that the clerk of the court serve a copy of this Report and Recommendation upon the parties in accordance with this court's Local Rules.

A handwritten signature in black ink, appearing to read "David E. Peebles", is written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: September 18, 2009
Syracuse, New York